

## START IN THE RIGHT PLACE with the right material



1.

If you have **AN EMERGENCY**

or have been served with papers  
that require immediate attention,  
read chapters 10–14 right now,  
then start from the beginning.

Served with a Petition? Respond now!  
See chapter 2 and Book 1.

2.

If your case is **JUST STARTING** or **UNCONTESTED**

*Use Book 1, How To Do Your Own Divorce*

This is where you start and where you will remain  
if no one goes to court to solve problems.

Your case is uncontested if

- Petition filed, possibly a Response too, *and*
- Your spouse doesn't enter the case, *or*
- You can reach agreement without legal action

3.

If your case has **PROBLEMS** and is not going smoothly  
or if it just might become **CONTESTED**

*Use this book (Book 2), together with Book 1, How to Do Your Own Divorce*

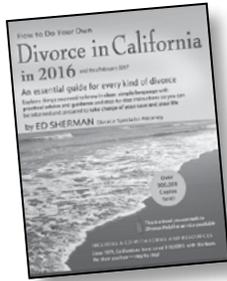
How to solve problems out of court, talk to your spouse, negotiate and settle,  
defend against legal action, and use legal action to help solve problems. If you  
need to take legal action, you will also need Book 1.

Your case has problems if

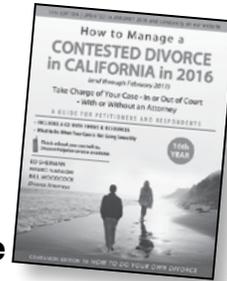
- You are not safe and financially stable for at least a few months, *or*
- Your parenting arrangements are not acceptable right now, *or*
- You think your ex might try to pull a fast one, *or*
- You can't get information needed to decide what's yours, *or*
- Too much upset on one side or the other to work anything out, *or*
- Things are dragging on and going nowhere and that's not okay

Your case is contested if

- Petition *and* Response filed; *and*
- Your spouse starts legal activity; *or*
- You need court orders for custody or support; *or*
- A preemptive strike is needed to beat the other side to the punch; *or*
- Legal action is required to get information or documents; *or*
- Agreement can't be reached through negotiation



## Relationship between How to Do Your Own Divorce and How to Manage a Contested Divorce



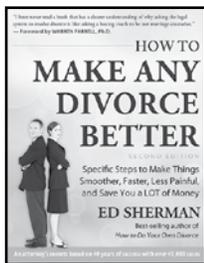
In the text, we refer to these as “Book 1” and “Book 2”

### **Book 1** **HOW TO DO YOUR OWN DIVORCE** — *For an Out-of-Court Divorce*

This is the book you use to start your case. It is the only book you will need if you can resolve divorce issues and your spouse does not go to court to oppose the divorce. Covers the laws and includes all forms necessary to complete your divorce. CD with forms and worksheets included with this book.

### **Book 2** **HOW TO MANAGE A CONTESTED DIVORCE**

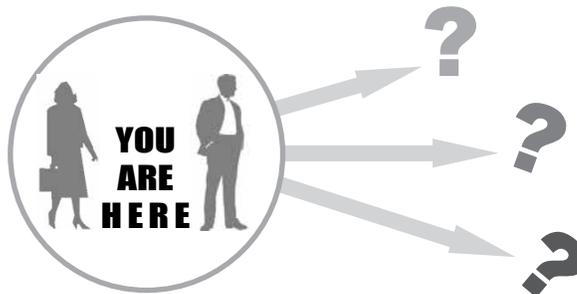
If your case is not going smoothly, Book 2 shows you how to solve problems, talk to your spouse, negotiate and settle, defend against legal action, and—if necessary—use legal action to help solve problems. If you have to go to court, you need this book, plus some forms and instructions found in Book 1.



### **More depth on reducing conflict and solving problems . . .**

#### **How to MAKE ANY DIVORCE BETTER**

Specific steps you can take to reduce upset, insecurity, conflict, protect children. How to talk to your Ex, how to negotiate, how to organize your facts, documents and your thinking. This is the newer, better version of the famous, award-winning *Practical Divorce Solutions*. Includes a CD with worksheets. Portions of this book that discuss emotional upset and how to negotiate are condensed into two chapters in *How to Manage a Contested Divorce*, which is specifically for California and focuses more on legal action. It could be very helpful to have all three books.



## CHAPTER 1

### YOU ARE HERE –which way to go, what it takes

- A. Deal with emergencies first
- B. Three ways you can go in your case
- C. What it takes to get where you want to go

#### **A** Deal with emergencies first

In the legal system, an emergency is something that requires court orders and can't wait the several or many weeks that it takes to get a hearing on a motion. You have an emergency if you have good reason to believe that, unless you get immediate court orders, something bad will happen very soon. For example:

- You or your children are in imminent danger; *or*
- Property will be taken, transferred, wasted, or hidden; *or*
- Your children will be physically removed or hidden away from you.
- Legal papers have been served on you that require you to show up in court very soon.

If you have an emergency, go immediately to chapters 10–14 and deal with it. Come back here later and pick up where you left off.

#### **B** Three ways you can go in your case

At any given point in any case, there are only three things you can do:

1. Take legal action
2. Negotiate
3. Do nothing

As a general rule, you should always encourage and work toward a negotiated settlement unless there is a good reason *not* to. In many situations, you can take legal action *and* negotiate at the same time.

##### 1. Reasons to choose legal action

- a. Emergency.....(chapters 10-13)
- b. Respond to action from the other side .....(chapter 14)
- c. Get needed information.....(chapter 17)
- d. Strategic need for action .....(see below)
- e. Put pressure on negotiations, move case forward.....(see below)
- f. “I don't know, we just always do it that way” .....(for lawyers only)

## 2. Reasons you would choose NOT to negotiate

You should *always* encourage negotiation and work toward a settlement *unless* there is a good reason not to. Using techniques in chapters 3 and 4, people who might otherwise fall easily into conflict can now find new opportunities to make negotiation work. However . . .

\* Sometimes legal action is required to get negotiation to work and you end up doing both at the same time. For example, your spouse has been dragging feet or avoiding you, so you file a motion and the pressure of a court date coming up gets things moving.

\* There are times and situations where you should *not* negotiate, or at least not yet:

- a. You are dealing with an abusive or controlling spouse
- b. You have a strategic need for legal action first
- c. Your spouse refuses to give you copies of essential documents
- d. There are uncontrollable levels of upset, fear, or anger on either side

a) **Abusive or controlling spouse.** Abuse is fundamentally a matter of domination and control, and includes everything from psychological manipulation to physical attack. To the abusive spouse the court looks like a new weapon to use against you. Almost any degree of effort to dominate and control you qualifies your spouse as an abuser and serves as an indication that you have better things to do before you start negotiating. First, you need to take some legal action to get into a position of strength and to establish structure for your negotiations—*then* you can try to negotiate. Read Part Two and choose a legal action that promises to be useful in your particular situation.

b) **Strategic need for action.** In certain situations, orders may be needed immediately, *before* you start negotiating. In other cases, you will use legal action to improve the effectiveness of negotiation. It is often possible to take legal action and negotiate at the same time.

- **Emergencies.** If you have an immediate need for protection for you, your children, or your property, you need a restraining order right away and there's no time to stop and talk. If your spouse is going to take the kids and go over the border, you need an order to try to stop that instantly. If you have *no* money to live on and your spouse has some but won't give you any, you need to file a support order immediately. If you have an emergency situation, read chapters 10–13, take care of it, then come back here later.

- **Under attack.** If the other side is throwing legal action at you, you need to stand up and assert yourself, take some legal actions of your own, and sort things out before you can settle into talks. You don't want to negotiate from weakness while under siege.

- **Child custody orders.** Here is an unfortunate feature of our legal system: when it comes to custody and visitation, status quo—the way things have been for a while—is *everything*. If the children are doing okay, then the way parenting has been working when you get to court is the way things will probably stay unless you have a truly powerful case or can get a voluntary agreement to change things. So, if your spouse is unwilling to cooperate in a stable and reliable parenting arrangement that is agreeable to you, you might be better off going straight to court rather than continuing to negotiate to change a situation that you don't want, thereby giving it time to become "status quo." Sometimes, getting the right parenting arrangement immediately is very important if it looks like you are eventually going to end up in a custody battle anyway. Take legal action but keep negotiating too, if possible, trying to get an agreement for a reasonable status quo you can live with.

- **First to accuse.** Another terrible feature of our system is that there *could* be an advantage to being the first to accuse the other through an Order to Show Cause (OSC) seeking temporary restraining orders (TROs). If the first to accuse gets an immediate custody order, the court process

could drag on for months before you finally get a hearing when, if the child is doing okay, the judge is not likely to change the status quo that the “temporary” order created. This means that in a doubtful situation, you can’t wait for the other parent to accuse you of something. You don’t want to jump at the other parent’s throat, but you must be aware of the problem if your spouse’s attorney decides to jump at yours. If you fear this possibility and want to avoid it, you have two choices: (1) get into good communication with your spouse so that he/she won’t accuse you of anything, or (2) file your Request for Orders first (chapters 11–16). If there is no valid basis for an accusation, it might help to go with your spouse to a counselor or mediator. However, if your spouse is an abuser/controller, it isn’t likely to work and you need to realize that you are subject to attack.

- **Support order.** The obligation for support doesn’t start until there is an agreement or an order, which means that without a written agreement, you can’t get an order for support that starts before the date you file a motion for support. So, if you are not getting adequate support right now relative to your spouse’s earnings, consider filing a motion at once for support orders. This action can increase the level of conflict, so think carefully and be sure it’s worth it before you take this step. Keep negotiating, if possible, while legal action proceeds. An alternative to a motion would be to make a stipulation with your spouse as described in chapter 5D that you file with the court. Use the form illustrated at Figure 5.1 and simply state, “The parties stipulate that any (spousal/child) support order entered in this case can have a commencement date of \_\_\_\_\_.”

- **Strategic orders.** In some cases, for strategic reasons you will want orders *before* you negotiate. For example, you are at a disadvantage and want to bargain from strength, so you use a strategic legal action to improve your position. If your case lacks structure and clarity, a motion to advance some small part of your case can give your entire situation some structure. A court hearing can be like a reality check—it strips away illusions. Or, let’s say your case is stalled because your spouse won’t pay attention, cooperate, and take care of business, so you make a motion to get your spouse’s attention focused on the negotiation. If a hearing is fast approaching, the pressure is on to work things out.

c) **Spouse refuses to give you essential information.** You can certainly *start* to negotiate and make getting information and copies of documents a top priority, but at some point it becomes a requirement for further negotiation. First, try to get whatever you need yourself, using the methods in chapter 8. For items you can’t get that way, make polite, then firm, requests for what you need, then finally a demand by a certain date. If your spouse still won’t give you what you need, you *must* stop negotiating and start discovery. Don’t waste time; go to chapter 17 and start right away. When you have the information and documents you need, you might be ready to negotiate again.

d) **Uncontrollable levels of upset, fear, or anger on either side.** You can’t negotiate business issues when either side is in a highly emotional state and unable to control it. You should not make important decisions if your own judgment is not reliable. Chapters 3 and 4 tell you how to deal with emotional issues so you can get down to business.

### **3. Reasons to choose to do nothing**

Very often, doing nothing, especially in the legal system, is the best thing you can do. Assuming your living situation is reasonably safe and stable for at least the next few weeks or months, and assuming that you don’t need court action for any of the reasons discussed above, doing nothing for awhile allows emotions to cool and gives your spouse time to get used to the idea that the divorce is happening, or get used to what the law requires, or to new ideas that you have proposed in settlement talks.

## What it takes

**Effort.** You have a lot to learn and the deeper you get into conflict, the more complicated it gets. Representing someone is work, whether a lawyer does it or you do it for yourself. This might be the most important job you ever undertake, and, like any new job, you have to work extra hard to learn it. Work hard, get help if you need it, do a good job, and you will be well paid for your effort.

**Organization.** You need to be very meticulous and detailed on this job. We show you how to keep good notes, records, and files. Don't take this lightly! A confused file will cause *you* to become confused.

**Objectivity.** It is widely said that a lawyer who represents himself has a fool for a client. This is because a lawyer must be objective. If you are going to be your own attorney, you must struggle to be objective. This is one reason we recommend that, if you can afford it, you get a Divorce Helpline attorney to act as your coach and guide. The neutral lawyer brings experience and objectivity to your case. The more emotional you are, the more you need assistance.

**Confidence.** It takes confidence to represent yourself. You can't be afraid of face-to-face negotiations with the other side or going to court, otherwise you can be bullied into accepting less than you are entitled to. Having reliable information can help you gain confidence, but if you read this book and still feel insecure, get help. Find a reliable attorney to act as your coach and guide—you need someone in your corner. The more you lack confidence, the more you need help.

## Who can help

**Paralegals.** Independent paralegals—by law they are now called Legal Document Assistants—can help you do paperwork, but they cannot give you legal advice or counseling because they don't have the training or background for it.

**Family Law Facilitators.** Every county has a Family Law Facilitator's office where you can get free assistance. Some offices only work on child support matters, while others will help with almost any aspect of doing your own divorce. We hear the quality of service ranges from poor to very good. Certainly, the facilitators who helped us review this book were mostly excellent. Demand far exceeds supply, so it takes a lot of time and persistence to get help. Contacting facilitators by phone might be difficult, in which case you should go in. If you have time—or no other choice—find out what help you can get. Read this book before you go in and don't forget to take all your notes and paperwork with you.

**Divorce Helpline** was created to change the way attorneys practice divorce and to provide expert support for people who are doing their own divorces. Divorce Helpline attorneys work exclusively as your coach, guide, and assistant, helping you solve problems and develop options. In many cases, if requested, they can work with both sides. They can help anyone, anywhere, by phone, or in person at their offices in San Jose, San Francisco, San Rafael, Oakland, Walnut Creek, Santa Cruz, Sacramento, Roseville, Folsom, Nevada City, Los Angeles, Encino, Irvine and San Diego. Learn more about Divorce Helpline, including rates and services, at their web site at [www.divorcehelp.com](http://www.divorcehelp.com), or call 800-359-7004.

## What to do next

If you need to take immediate legal action, or respond immediately to legal action against you, go to Parts Two and Three. Otherwise, go on to chapter 2 and learn how the legal system works and how to make talking with your spouse effective and productive.